

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

_____)	
In the Matter of)	
)	
Misuse of Internet Protocol (IP) Captioned)	CG Docket No. 13-24
Telephone Service)	
)	
Telecommunications Relay Services and)	CG Docket No. 03-123
Speech-to-Speech Services for Individuals)	
With Hearing and Speech Disabilities)	
_____)	

**COMMENTS OF CAPTIONCALL, LLC ON SPRINT CORPORATION'S PETITIONS
FOR CLARIFICATION AND RECONSIDERATION**

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TABLE OF CONTENTS

I.	Introduction and Summary	1
II.	The Commission Should Grant Sprint’s Request to Adopt A Framework for Certifying ASR Providers That Will Ensure They Can Provide Quality Service.	2
A.	The Commission Should Require That All ASR Certification Applications Be Subject to Notice and Comment.....	4
B.	The Commission Should Clarify That ASR Providers Will Not Be Certified Unless They Can Demonstrate the Ability to Deliver Service That Meets Substantive and Technical Needs.	5
1.	The Commission Should Adopt Substantive Performance Standards for ASR.	5
2.	The Commission Should Develop Procedures To Ensure that ASR Providers Meet These Performance Requirements.....	10
III.	The Commission Should Reconsider the Second-Year Interim Rates	13
A.	The Record Is Inadequate To Support An Interim Rate Of \$1.58 Per Minute.	14
B.	Setting Interim Rates Too Low Would Fail to Properly Incentivize IP CTS Providers.	16
	CONCLUSION.....	17

CaptionCall, LLC (“CaptionCall”) submits these comments in response to Sprint Corporation’s (“Sprint”) Petition for Clarification or, in the Alternative, Reconsideration of the Commission’s *Declaratory Ruling* on Automated Speech Recognition (“ASR”) (“ASR Petition”)¹ and Sprint’s Petition for Reconsideration of the interim IP CTS rates the Commission announced in its *Report and Order* (“Rates Petition”).²

I. Introduction and Summary.

CaptionCall supports several aspects of Sprint’s Petition for Reconsideration. Sprint’s ASR Petition requests that the Commission, among other things, withhold approval of an ASR provider’s application for certification³ until the ASR provider demonstrates that its offering “is at least as robust as current IP CTS offerings” along several critical measures of technical and substantive performance.⁴

CaptionCall agrees that the Commission should not certify ASR providers prior to adopting a framework to ensure that introduction of ASR will not compromise service quality or dilute mandatory minimum standards. Specifically, CaptionCall urges the Commission to adopt a certification framework that includes: (1) an opportunity for notice and comment on applications

¹ See *Consumer and Governmental Affairs Bureau Seeks Comment on Sprint Petitions Regarding the Report and Order and Declaratory Ruling on Internet Protocol Captioned Telephone Service*, Public Notice, CG Docket Nos. 13-24, 03-123, DA 18-818 (Aug. 6, 2018) (“*Public Notice*”); Sprint Petition for Clarification or, in the Alternative, Reconsideration, CG Docket Nos. 13-24, 03-123 (July 9, 2018) (“*Sprint PFC*”); *In re Misuse of Internet Protocol (IP) Captioned Telephone Service*, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, CG Docket Nos. 13-24, 03-123, FCC 18-79 ¶ 60 (June 7, 2018) (“*Order*,” “*Declaratory Ruling*,” “*FNPRM*,” or “*NOI*,” as appropriate). Like the Commission, CaptionCall uses the term Automated Speech Recognition, to refer to the use of ASR without a human Communications Assistant to produce captions. See *Declaratory Ruling* ¶ 48 n.160.

² See *Public Notice*; Sprint Petition for Reconsideration, CG Docket Nos. 13-24, 03-123 (July 27, 2018) (“*Sprint Rates PFR*”); *Order* ¶ 16.

³ *Declaratory Ruling* ¶ 48.

⁴ *Sprint PFC* at 2-3.

to provide ASR; (2) interim service quality measures; and (3) procedures for assessing and enforcing interim performance measures.

CaptionCall also supports aspects of Sprint's Rates Petition. In the *Report and Order*, the Commission adopted a year-one (2018-2019) interim rate at \$1.75 per minute and a year-two (2019-2020) interim rate at \$1.58 per minute.⁵ Sprint's Rates Petition urges the Commission not to adopt these interim rates, but rather to "'freeze' the IP CTS rate at its 2017-18 level," determined using a MARS-based methodology.⁶ CaptionCall agrees with Sprint that the record is inadequate to support the interim rates and that the interim rates do not properly incentivize providers. Even if the Commission chooses to adopt interim rates, CaptionCall supports Sprint's request that the Commission reconsider the second-year rate of \$1.58, which is unjustified, and prejudices the outcome of several questions on which the Commission is currently seeking notice.

II. The Commission Should Grant Sprint's Request to Adopt a Framework for Certifying ASR Providers That Will Ensure They Can Provide Quality Service.

CaptionCall has made and continues to make considerable investments in ASR, which holds tremendous promise for consumers, the Commission, and IP CTS providers. As CaptionCall has indicated,⁷ its "goal is to deliver a functionally equivalent, scalable, and cost-effective [ASR solution] that can provide industry-leading service for the growing population of people with hearing impairments." CaptionCall shares the Commission's commitment to the development and introduction of technologies that can provide consumers with functionally equivalent telephone service.

⁵ *Order* ¶¶ 14-16, 19, 24.

⁶ *Sprint Rates PFR* at 3.

⁷ Letter from Rebekah P. Goodheart, Counsel to CaptionCall, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123, 13-24 at 7 (May 29, 2018) ("*CaptionCall 5-29-18 Ex Parte*").

But, like Sprint, CaptionCall is concerned that the *Declaratory Ruling* does not provide a framework to determine whether prospective providers of ASR are capable of satisfying mandatory minimum standards. Doing so is critical to protect consumers because ASR still suffers from limitations that may influence its effectiveness for certain types of calls.⁸ Moreover, MITRE’s research on the performance of various ASR solutions by its own descriptions was preliminary and may be unreliable or, at the very least, unrepresentative.⁹ And, as other commenters have observed, there remain concerns about whether ASR providers can handle emergency communications,¹⁰ respect privacy,¹¹ and offer reliable and resilient service.¹²

For these reasons, CaptionCall agrees with Sprint’s ASR Petition and urges the Commission to adopt a certification framework that includes: (1) an opportunity for notice and

⁸ See e.g., *Declaratory Ruling* ¶ 52 (“[T]here are various factors that may influence [ASR’s] effectiveness for different calls.”); *Id.* (“ASR may be more conducive to communication on certain categories of calls . . . where there is likely to be less background noise and clearer articulation by call takers, or calls to friends, relatives and colleagues, who may be more aware of and sensitive to the user’s hearing loss and the need to speak clearly.”); Letter from Blake E. Reid, Counsel for Telecommunications for the Deaf and Hard of Hearing, Inc., to Marlene Dortch, Secretary, FCC, CG Docket Nos. 13-24, 03-123 at 3 (May 25, 2018) (“*Consumer Groups’ 5-25-18 Ex Parte*”).

⁹ See, e.g., Letter from David A. O’Connor, Counsel for Hamilton Relay, Inc., to Marlene Dortch, Secretary, FCC, CG Docket Nos. 13-24, 03-123 at 2 (May 24, 2018) (“*Hamilton 5-24-18 Ex Parte*”); Letter from John T. Nakahata, counsel to CaptionCall, LLC, to David Schmidt, TRS Fund Program Coordinator, Office of Managing Director, FCC, CG Docket Nos. 03-123, 13-24 Attach. 1 (Dec. 21, 2017) (“*CaptionCall 12-21-17 Ex Parte*”).

¹⁰ See, e.g., *Hamilton 5-24-18 Ex Parte* at 2 (noting that “911 calls using ASR are an untested and potentially unreliable means of communicating with emergency officials”); *Consumer Groups’ 5-25-18 Ex Parte* at 4 (“To forge ahead with ASR-based solutions without confidence that they will work properly in an emergency could seriously jeopardize the lives and safety of consumers with disabilities.”); Letter from Scott R. Freiermuth, Counsel for Sprint Corporation, to Marlene Dortch, Secretary, FCC, CG Docket Nos. 13-24, 03-123 at 2 (June 1, 2018) (echoing concern about whether ASR can handle emergency calls effectively) (“*Sprint 6-1-18 Ex Parte*”).

¹¹ See, e.g., *Consumer Groups’ 5-25-18 Ex Parte* at 4; *Sprint 6-1-18 Ex Parte* at 2.

¹² See *Sprint PFC* at 11-12; Letter from Blake E. Reid, Counsel for Telecommunications for the Deaf and Hard of Hearing, Inc., to Marlene Dortch, Secretary, FCC, CG Docket Nos. 13-24, 03-123 at 5 (July 26, 2018) (“*Consumer Groups’ Certification Framework*”).

comment on applications to provide ASR; (2) interim service quality measures; and (3) procedures for assessing and enforcing interim performance measures. This approach is consistent with the proposal submitted by the Hearing Loss Association of America, Telecommunications for the Deaf and Hard of Hearing, and National Association of the Deaf (together, the “Consumer Groups”), as well as the Deaf/Hard of Hearing Technology Rehabilitation Engineering Research Center (“DHH”).

A. The Commission Should Require That All ASR Certification Applications Be Subject to Notice and Comment.

In its ASR Petition, Sprint urges the Commission to “provide notice and an opportunity for comment on all ASR certification applications.”¹³ Sprint reasons that this procedural safeguard will “ensure that any ASR providers certified by the Commission in fact are providing services that are ‘functionally equivalent.’”¹⁴

CaptionCall agrees. A notice and comment process for ASR certification applications will help ensure that the Commission has all of the information needed to assess the merits of a submission and that the Commission does not certify ASR providers unable to comply with the mandatory minimum requirements.¹⁵ A formal comment cycle, with a response by the ASR provider requesting to be certified, will help ensure that the Commission has a full record upon which to make a decision.

¹³ *Sprint PFC* at 3.

¹⁴ *Id.*

¹⁵ *See Consumer Groups’ Certification Framework* at 2-3.

B. The Commission Should Clarify That ASR Providers Will Not Be Certified Unless They Can Demonstrate the Ability to Deliver Service That Meets Substantive and Technical Needs.

CaptionCall also agrees with Sprint's request that the Commission adopt measures to evaluate whether applicants to provide ASR will provide functionally equivalent service, including—at a minimum—that “every certified ASR provider offers service that: (1) provides an acceptable level of accuracy; (2) protects the privacy of communications; (3) facilitates successful emergency communications; and, (4) operates in a seamless fashion.”¹⁶ Adopting measures to ensure that ASR providers can meet these requirements is consistent with the Commission's *Declaratory Ruling*.¹⁷ It is also important. As CaptionCall has previously suggested, there is no evidence to suggest that ASR is ready to deliver standalone service that meets minimum standards.¹⁸

The Commission should adopt Sprint's request, which could serve as a bridge until the Commission adopts performance quality measures in response to the pending Notice of Inquiry, by looking to the multipart framework recently submitted by the Consumer Groups and DHH.¹⁹ As discussed below, CaptionCall supports most aspects of the Consumer Groups and DHH's proposal.

1. The Commission Should Adopt Substantive Performance Standards for ASR.

Quality. Although ASR holds substantial promise for the Commission and consumers, it is pivotal that the Commission take steps to ensure the introduction of ASR does not compromise

¹⁶ *Sprint PFC* at 8.

¹⁷ *Declaratory Ruling* ¶ 60.

¹⁸ *CaptionCall 12-21-17 Ex Parte* at attach. 1 at 1-2. The MITRE study provides a useful start. However, it also suffers from several limitations. *CaptionCall 5-29-18 Ex Parte* at 8.

¹⁹ *See generally Consumer Groups' Certification Framework.*

service quality. To protect consumer access to functionally equivalent IP CTS, the Commission should clarify that it will not certify new providers until it adopts and applies interim performance measures. CaptionCall favors use of the interim standard proposed by the Consumer Groups and DHH, namely, that all applicants be required “to demonstrate with substantial evidence that their offerings meet or exceed the usability of existing market offerings, considering transcription delays, accuracy, speed, and readability.”²⁰

To assess transcription delays—*i.e.*, latency—and accuracy, the Consumer Groups and DHH suggest drawing on the regulations applicable to closed captioning on television.²¹ Although CaptionCall generally supports this approach, we urge the Commission to adopt two modifications to the proposal.

First, with respect to latency, CaptionCall suggests that the Commission define delay based on the time that elapses between the utterance of a particular word by the hearing party and the final displayed appearance of that word on the IP CTS user’s display. Based on current performance of CA-based services, the Commission could set a performance measure that is expressed in seconds. This would facilitate an objective assessment of latency. In practice, this measure of latency would function much like the regulation of delay for closed captioning of live television, which also cannot be perfectly simultaneous.²² Second, and with respect to accuracy,

²⁰ *Consumer Groups’ Certification Framework* at 3.

²¹ In CaptionCall’s view, existing regulations provide a sufficient basis for assessing whether applicants offer adequate speed of answer.

²² To that end, a definition of latency that is drawn from regulations applicable to closed captioning on live television provides a useful start, particularly because the emphasis on reducing delay to the “greatest extent possible” reflects the practical impossibility of delivering captions that coincide perfectly with spoken words. CaptionCall proposes a more precise and quantitative definition because doing so may enable the Commission to measure delay at various points in a sentence, may provide greater certainty to the Commission, consumers, and providers, and may

CaptionCall notes that the Commission may wish to limit testing to calls conducted in English and Spanish, which comports with existing offerings by certified providers.

The *Declaratory Ruling* requires that prospective ASR providers demonstrate the ability to provide service, across “all types of calls.”²³ Doing so is pivotal because consumers who rely on IP CTS will use the telephone to interact with a wide variety of speakers across a wide variety of circumstances. CaptionCall believes that, in developing an interim measure of whether an applicant can handle all types of calls, the Commission can and should begin with the proposal submitted by the Consumer Groups and DHH.²⁴ However, anticipating the variety of scenarios in which users may need IP CTS is challenging. As a result, the proposal should be supplemented if gaps emerge during implementation.²⁵

Emergency Calling. The Commission required that “providers using ASR must demonstrate that their services support 911 emergency calling and meet applicable emergency call

make it easier for the Commission to adopt a framework that provides consumers with access to services that tolerate slightly greater latency to deliver more accurate captions.

²³ *Declaratory Ruling* ¶ 60.

²⁴ *Consumer Groups’ Certification Framework* at 6 (suggesting, first, that “all types” of calls include male and female speakers who are children, rely on jargon, are heavily accented, and who speak at different rates, at different volumes, or with “varying reliance on colloquial and idiomatic,” as well as calls “including callers who speak over each other, multiple callers and conference calls, calls involving speakers with speech disabilities or impediments, calls involving volume amplification, and calls made with significant background noise.”).

²⁵ Because the accuracy of captions can be affected by familiarity or lack of familiarity with a particular speaker’s mode of speech, CaptionCall agrees that any testing should evaluate the existence and effect of any algorithmic bias. See, e.g., Will Knight, *AI Programs are Learning to Exclude Some African-American Voices*, MIT Technology Review (Aug. 16, 2017), <https://www.technologyreview.com/s/608619/ai-programs-are-learning-to-exclude-some-african-american-voices/>.

handling requirements.”²⁶ Enforcing this requirement is critical to public safety.²⁷ For this reason, CaptionCall joins the Consumer Groups and DHH in suggesting that the Commission “insist that applicants demonstrate conclusively that consumers who utilize their services in emergency situations will be able to rely on the transcription of a 911 call-taker’s questions and instructions to make life-and-death decisions.”²⁸

CaptionCall also agrees that prospective providers should be required to demonstrate that they have the means to monitor captioning performance on emergency calls and intervene as necessary to correct captions.²⁹ And, because ASR remains untested, providers who intend to rely on fully automated services should be required to retain and adequately train CAs to monitor and intervene on calls involving emergencies. In this regard, the proposal submitted by the Consumer Groups and DHH should be supplemented. In addition to requiring that ASR providers monitor 911 calls, and intervene with CAs when necessary, the Commission should also ensure that ASR providers monitor and intervene (as needed) on non-911 emergency calls, such as calls to poison control centers. If ASR providers obtain conditional certification, *see infra* at 12, they should then be required to conduct and submit comprehensive studies demonstrating that their ASR solution is meeting emergency call handling requirements and rendering captions that are sufficiently accurate.

²⁶ *Declaratory Ruling* ¶ 60 & n.208.

²⁷ *Consumer Groups’ 5-25-18 Ex Parte* at 4 (“To forge ahead with ASR-based solutions without confidence that they will work properly in an emergency could seriously jeopardize the lives and safety of consumers with disabilities.”).

²⁸ *Consumer Groups’ Certification Framework* at 5.

²⁹ *Id.*

Finally, CaptionCall notes that any assessment of a prospective provider's capacity to handle emergency calls should—in light of the Commission's past experience³⁰—evaluate the provider's compliance with Commission regulations that govern the routing and queuing of 911 calls, as by taking measures to ensure calls are routed to the relevant public-safety answering point (“PSAP”).³¹

Privacy. The Commission's rules “prohibit the disclosure of call content and the retention of records of any TRS call beyond the duration of the call.” Moreover, in its Declaratory Ruling, the Commission asked each “applicant[] for ASR certification to provide information about measures they will take to ensure the confidentiality of call content transcribed through an automated speech engine” and “to ensure compliance with this rule.”³² Indeed, the Commission made clear that it “will not approve any application to provide IP CTS using ASR that does not demonstrate that the applicant will meet the Commission's mandatory minimum standards . . . including those on confidentiality of IP CTS calls.”³³

The Commission's instruction that providers of ASR comply with regulations governing the disclosure or retention of call content, and request that ASR providers submit information demonstrating how they will comply, reflects the importance of protecting consumer privacy.³⁴ Like the Commission, CaptionCall believes that protecting privacy is important. The company is

³⁰ See, e.g., *In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Purple Communications, Inc. Request for Review of Withholding of TRS Payments*, Order, 29 FCC Rcd 13,716 (CGB 2014); *In re Misuse of Internet Protocol (IP) Captioned Telephone Service*, Order, 30 FCC Rcd 2934 (CGB 2015) (temporarily suspending InnoCaption Inc.'s certification).

³¹ See 47 C.F.R. § 64.605(a).

³² *Declaratory Ruling* ¶ 63.

³³ *Id.*

³⁴ *Id.* (citing 46 C.F.R. § 64.604(a)(2)).

committed to maintaining the confidentiality of calls made through its service. Requiring providers of ASR to satisfy existing rules on privacy is consistent with these principles. Accordingly, CaptionCall welcomes the Commission’s emphasis on ensuring that ASR providers take measures to ensure that they comply with rules on privacy.

Resilience. The Consumer Groups and DHH join Sprint in advocating that the Commission adopt interim measures designed to test for resilience. CaptionCall agrees that, in addition to demonstrating the capacity to satisfy unexpected spikes in volume that occur during emergency and noteworthy events, providers “should be required to demonstrate that their service performs effectively across different types of equipment, wiring, and networking conditions.”³⁵ As the Consumer Groups and DHH suggest, it is also important that prospective providers “demonstrate the capacity for error correction.”³⁶ And in evaluating whether ASR providers have developed a sufficiently resilient and reliable service, the Commission should also confirm that providers have implemented the capacity to automatically reconnect users in the event that calls are disconnected and to implement other technical measures that ensure users receive seamless telephone service.

2. The Commission Should Develop Procedures to Ensure That ASR Providers Meet These Performance Requirements.

Without checks on whether prospective providers of ASR have the demonstrated capacity to satisfy substantive performance standards, and on whether approved providers of ASR meet those standards in delivering service, there is a risk that ASR providers will introduce waste into the program, as by securing compensation for delivering IP CTS that does not meet the mandatory minimums, or as a result of other issues.³⁷ To address this concern, and as elaborated below,

³⁵ *Consumer Groups’ Certification Framework* at 5.

³⁶ *Id.*

³⁷ Sprint suggests that the Commission must refrain from compensating ASR providers at this time because permitting ASR providers to offer compensable service would eliminate CAs, who “may

CaptionCall advocates that the Commission perform initial testing, rely on conditional certification, and engage in ongoing monitoring of ASR providers.

Initial Testing. To determine whether applicants can comply with interim performance standards, the Commission should implement “rigorous, scientifically valid product testing” that involves application of a standardized, public, testing protocol.³⁸ The consistent application of a uniform methodology will ensure that results are probative of quality. Indeed, as the Consumer Groups and DHH rightly note, an approach that instead permits providers to create their own testing methodologies could result in the use of “self-serving metrics” that do not allow the Commission to meaningfully evaluate whether a service can provide functionally equivalent service and that do not allow consumers to “conduct apples-to-apples comparisons of quality.”³⁹

CaptionCall believes that the Consumer Groups and DHH have identified a sound approach to constructing and implementing a temporary approach to testing.⁴⁰ Relying on an independent designee to assess quality based on a library of pre-recorded calls that are representative of the speakers and circumstances already articulated, *see supra* at 7 n.24, would provide the Commission with a mechanism for policing quality until providers, consumer groups, experts, and

serve as an important check to ensure that users are actually relying on captions and the TRS fund is not being unnecessarily overdrawn.” *Sprint PFC* at 14. While CaptionCall agrees that there must be checks on the waste, fraud, and abuse that might be generated by ASR-exclusive service, Sprint’s suggestion that the Commission should rely on CAs to monitor reliance on captions is unworkable. In addition to raising difficult questions about privacy and confidentiality, Sprint’s proposal would detract from the ability of CAs to focus on accurately revoicing communications and timely correcting any errors in the captions produced by ASR.

³⁸ *Consumer Groups’ Certification Framework* at 3.

³⁹ *Id.*

⁴⁰ *Id.* at 4.

others have had an opportunity to explore and propose alternatives, presumably, in connection with the Commission's pending Notice of Inquiry.⁴¹

Conditional Certification. In their proposal, the Consumer Groups and DHH observe that “[w]hile ex ante demonstration of the capacity for functional equivalence is critical, it is even more important the Commission verify that these demonstrations bear out in actual deployment.”⁴² As a result, the Consumer Groups and DHH conclude that all certifications should be granted on a conditional basis.

CaptionCall agrees. In the absence of any real-world evidence about how ASR providers will perform once deployed for commercial use, all certifications should be conditioned on a subsequent review of performance. This is particularly important because ASR providers will be offering a service that depends on an altogether unproven approach to delivering IP CTS. As the Commission has previously recognized, where an application for certification presents a novel mechanism for delivering service, and appears to satisfy all of the requirements for certification, granting conditional certification is appropriate because it ensures that the Commission has an

⁴¹ CaptionCall emphasizes that its support for interim definitions of the relevant performance measures, interim testing procedures, and other components of a temporary certification framework, do not prejudice any elements of a future framework for ensuring performance quality, such as those elements identified in submissions to the Disability Advisory Committee. *See generally* IP CTS Quality Metrics: Provider Recommendations Submission of Hamilton, CaptionCall, Sorenson Communications, InnoCaption, ClearCaptions to Disability Advisory Committee, Federal Communications Commission (Aug. 21, 2018). As the Consumer Groups and DHH emphasize, identifying appropriate performance measures, as well as appropriate means for implementing them, requires careful study. *Consumer Groups' Certification Framework* at 3. CaptionCall may identify alternative and more effective approaches to defining, assessing, and implementing the necessary quality measures. CaptionCall therefore reserves its right to elucidate alternatives in future comments, including comments submitted in connection with the Pending Notice of Inquiry.

⁴² *Consumer Groups' Certification Framework* at 6.

opportunity “to validate, based on actual operating experience” that assertions regarding performance “will meet or exceed the minimum standards for TRS in practice over time.”⁴³

Ongoing Monitoring. CaptionCall agrees with the Consumer Groups and DHH that conditional certification should be accompanied by ongoing monitoring.⁴⁴ CaptionCall supports the proposal that a Commission designee with sufficient experience conduct quarterly audits to ensure compliance with mandatory minimums and interim performance measures. CaptionCall also supports the proposal that providers be required to report certain additional information and data. Regularly collecting consumer complaints, churn, and aggregated, anonymized data concerning the length and type of calls captioned will help the Commission to assess whether ASR providers offer functionally equivalent service to a representative sample of users and “inform [its] adoption of further measures to improve” the utility of ASR.⁴⁵

III. The Commission Should Reconsider the Second-Year Interim Rates.

In its Rates Petition, Sprint argues that the Commission should freeze IP CTS rates during the pendency of the instant rulemaking. Continuing to compensate IP CTS at the MARS rate, Sprint argues, will “ensure that the Commission relies on a complete, up-to-date record” and that providers are compensated for their reasonable costs.⁴⁶ CaptionCall agrees that the interim rates—and in particular the second-year rate of \$1.58 per minute—do not find adequate support in the record and will not create the appropriate incentives for providers. CaptionCall therefore urges

⁴³ *Notice of Conditional Grant of Application of Miracom USA, Inc.*, Public Notice, 29 FCC Rcd 5105, 5107 (CGB 2014); *see also id.* (indicating that application to provide new method for provision of IP CTS “require[s] more information about its effectiveness, and specifically the extent to which it is capable of providing relay services that meet or exceed the Commission’s minimum TRS standards and are functionally equivalent to voice telecommunications services.”).

⁴⁴ *Consumer Groups’ Certification Framework* at 6.

⁴⁵ *Declaratory Ruling on ASR* at ¶ 52.

⁴⁶ *Sprint Rates PFR* at 4-5.

the Commission to reconsider its decision to impose a year-two interim rate of \$1.58 per minute. If the Commission does impose interim rates at all, the second-year interim rate should be no lower than \$1.75.⁴⁷

A. The Record Is Inadequate to Support an Interim Rate of \$1.58 Per Minute.

To calculate interim rates, the Commission relied on cost data submitted to the Fund Administrator.⁴⁸ Sprint's Rates Petition argues that these data do not accurately reflect average provider costs, and is inadequate to support the Commission's chosen interim rates.⁴⁹ CaptionCall agrees. Indeed, the Commission has sought further comment on how to define and calculate provider costs.⁵⁰

Commission rules require IP CTS providers to submit data to the Administrator for the limited purpose of "determin[ing] the TRS Fund revenue requirements and payments."⁵¹ These data were not created for the purpose of setting rates for IP CTS provider compensation.⁵² Nor are they appropriate for this purpose. As CaptionCall has explained, there are no uniform definitions or guidelines applicable to providers' submissions to the Administrator, and "[t]hese

⁴⁷ *CaptionCall* 5-29-18 *Ex Parte* at 4.

⁴⁸ *Order* ¶¶ 16, 18, 23; *see also In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 03-123, 10-51, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate (Apr. 30, 2018) ("*TRS Fund Administrator's 2018 Report*").

⁴⁹ *See Sprint Rates PFR* at 7-9.

⁵⁰ *FNPRM* ¶¶ 71-84.

⁵¹ 47 C.F.R. § 64.604(c)(5)(iii)(D).

⁵² *See Comments of CaptionCall, LLC* at 2-3, CG Docket Nos. 13-24, 10-51, 03-123 (May 29, 2018) ("*CaptionCall 2018 Rolka Loube Comments*").

gaps make it impossible for the Commission to determine whether reported costs fit into existing allowable categories, or whether providers have reported costs uniformly, in parallel categories.”⁵³

Accordingly, CaptionCall and other IP CTS providers have consistently challenged the use of cost data submitted to the Fund Administrator for rate-setting purposes.⁵⁴ Neither the Commission nor the Administrator has developed a complete, up-to-date record or given appropriate consideration to the true costs of providing IP CTS, and CaptionCall agrees with Sprint that basing interim rates on such a tenuous record is arbitrary and baseless.

In addition to relying on incomplete data, the Commission’s methodology in setting the second-year interim rate at \$1.58 per minute is flawed. To arrive at this number, the Commission simply reduced the \$1.75 first-year interim rate by an arbitrary additional 10%.⁵⁵ There is no reasoned basis to do so. In an attempt to explain its 10% second-year reduction, the *Order* gestures at the Commission’s decision in the recent VRS proceeding.⁵⁶ But a reference to VRS does not create a reasonable basis for a second-year rate reduction in the IP CTS context.⁵⁷ Asserting that IP CTS and VRS are “analogous,” the *Order* imports a rate reduction and operating margin similar

⁵³ *CaptionCall 5-29-18 Ex Parte* at 3 (Rolka Loubé data on which interim rates are based is “nonuniform, opaque, and incomplete”).

⁵⁴ *See, e.g., Sprint Rates PFR* at 7; *CaptionCall 2018 Rolka Loubé Comments* at 2-3 (disputing that providers’ cost data submitted to Administrator are suitable for setting rates); *CaptionCall 5-29-18 Ex Parte* at 1-2 (data are submitted in order to allow “Fund Administrator to make reasoned decisions about the amount of revenue the Fund requires. They are not submitted for purposes of rate-setting.”); Sorenson Communications, Inc. Comments on Rolka Loubé Payment Formulas and Funding Requirements at 2, CG Docket Nos. 10-51, 03-123 (May 24, 2016) (“*CaptionCall 2016 Rolka Loubé Comments*”) (describing Commission’s request for comment on using Administrator’s cost data for ratemaking purposes as “highly alarming”); *accord* Comments of Sprint Corporation at 5, CG Docket Nos. 03-123, 10-51 (May 24, 2017); *Hamilton 5-24-18 Ex Parte* at 15.

⁵⁵ *Order* ¶ 18.

⁵⁶ *Id.* ¶ 24.

⁵⁷ *See id.* ¶¶ 23-24.

to those it imposed in the VRS context. In so doing, the Commission fails to identify any shared service features or address how any differences between IP CTS and VRS may bear on its analysis.⁵⁸ The Commission fails to identify any shared features of the two services that justify its assumption that they must be “comparable.” In short, there is absolutely no support in the record justifying a \$1.58 per minute rate for IP CTS.⁵⁹

B. Setting Interim Rates Too Low Would Fail to Properly Incentivize IP CTS Providers.

CaptionCall also agrees with Sprint that if the newly announced interim rates are unpredictable (or are set too low), this outcome could preclude providers from investing in service improvements and new technologies like ASR.⁶⁰ As discussed above, neither the Fund Administrator’s flawed cost data nor the arbitrary 10% second-year rate reduction provide a reliable basis for determining providers’ costs. This uncertainty could create perverse incentives *not* to explore greater use of new technologies, *not* to continue to adapt IP CTS to mobile services, and *not* to innovate in other ways that require upfront allocation of resources even if they could

⁵⁸ The Commission’s observation that labor costs account for a large portion of both IP CTS and VRS costs is not sufficient to support its assumption that the two services must be otherwise “comparable.” *See id.* ¶ 23, n.77; *id.* ¶ 24. Nor is the Commission’s assertion that the interim rates are “well above average projected as well as historical costs” well-grounded. *Id.* ¶23, n.75. Again, this calculation of “costs” is based on data submitted to the Fund Administrator, which was never intended to be used for rate-setting purposes, and is not uniform across providers, and is incomplete.

⁵⁹ *See CaptionCall 5-29-18 Ex Parte* at 3.

⁶⁰ *Sprint Rates PFR* at 13-14; *see also Order* ¶ 24 (acknowledging “parties’ concerns regarding the need for IP CTS providers to continue participating in ASR...research”); *see CaptionCall 2018 Rolka Loube Comments* at 3 (establishing rates based on Rolka Loube calculation of average costs “risks creating perverse incentives for IP CTS providers not to achieve efficiencies and service quality improvements”).

result in significant long-term efficiencies.⁶¹ This result would be contrary to the statutory mandate,⁶² as well as the Commission's own objectives.⁶³

CONCLUSION

For the foregoing reasons and those stated in Sprint's Petitions, CaptionCall respectfully requests that the Commission clarify that its *Declaratory Ruling* does not permit prospective providers of fully automated IP CTS to offer compensable service until the Commission has adopted and implemented an interim framework for evaluating ASR certification applications, as well as the subsequent performance of ASR providers.

Additionally, CaptionCall joins Sprint in opposing the interim rates adopted in the Commission's *Order*. If the Commission persists in its position that adopting an interim rate during the pendency of the IP CTS rulemaking is necessary, CaptionCall submits that the rate should be no less than \$1.75 per minute throughout the interim period.

⁶¹ See *CaptionCall 5-29-18 Ex Parte* at 3-4.

⁶² 47 U.S.C. § 225(d)(2) (prohibiting the Commission's TRS rules from "discourage[ing] or impair[ing] the development of improved technology").

⁶³ *Declaratory Ruling* ¶ 52; see also *CaptionCall 5-29-18 Ex Parte* at 3-4 (noting goals of fostering investment and innovation, and permitting ASR to develop as an alternative to CA-assisted IP CTS); see also *CaptionCall 2018 Rolka Loubé Comments* at 4; Letter from John Nakahata, Counsel to CaptionCall, LLC to Marlene Dortch, Secretary, Federal Communications Commission at 2, CG Docket Nos. 03-123, 13-24 (Sept. 7, 2017) (encouraging Commission to "consider ways to encourage IP CTS providers to make the necessary investments to improve ASR so it is capable of enabling users to have functionally equivalent conversations").

Respectfully submitted,

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September 7, 2018

CERTIFICATE OF SERVICE

I hereby certify that on this day, September 7, 2018, I caused a true and correct copy of the foregoing comments on Sprint Corporation's Petitions for Clarification and Reconsideration to be served by email and overnight mail on

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